

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:FSH:SL:MAN:TL-N-93-01  
AHintermeister

date: January 23, 2001

to: Henry V. Singleton, Acting Territory Manager  
Attn: Revenue Agent Dennis Whalen

from: Area Counsel  
(Financial Services and Healthcare:Manhattan)

subject: [REDACTED]  
Request for Assistance

DISCLOSURE STATEMENT

This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination, Appeals, or Counsel recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or Counsel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representative.

This advice is not binding on Examination of Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the Field Office with jurisdiction over the case.

Analysis

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will

inform you of the result of the review as soon as we hear from the office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

We are writing in response to your January 5, 2001 inquiry concerning service of summonses on taxpayer [REDACTED] ("[REDACTED]") and related entities and individuals. We understand the facts concerning the examination of [REDACTED] to be as follows. [REDACTED] is a corporation that was organized in [REDACTED]. The tax return being examined is [REDACTED]'s [REDACTED] Form 1120. The return was signed by [REDACTED] as Vice-President of [REDACTED]. [REDACTED]'s address is the offices of [REDACTED] in the [REDACTED]. A Form 7004 Application for Automatic Extension of Time to File Corporation Income Tax Return filed by [REDACTED] for [REDACTED] gives its address as the "Corporate Tax Department-[REDACTED]." [REDACTED] is also an employee of [REDACTED]. The sole shareholder of the taxpayer is the [REDACTED]. [REDACTED], the sole trustee, is also a [REDACTED] employee. [REDACTED]'s return states that its business activity is "Financing." Revenue Agent Dennis Whalen believes that [REDACTED] and the [REDACTED] are tax shelter entities or are involved in tax shelter transactions.

The taxpayer has been uncooperative. Mr. Whalen received no response to an audit letter sent [REDACTED]. He then called [REDACTED] who arranged for him to meet an associate of hers concerning the examination. When Mr. Whalen arrived for the meeting, the [REDACTED] reception staff told him that [REDACTED]'s associate could not be located. After waiting half an hour, Mr. Whalen left.

Service of summonses on the taxpayer, the named [REDACTED] employees involved, as well as the trust and [REDACTED] through custodial witnesses is appropriate. Under I.R.C. § 7602(a), the IRS has the power to issue a summons to any person who has information that may be relevant to an IRS inquiry. This power may be invoked to require a person to produce books and records or to give testimony so that the IRS may:

- (1) assess the correctness of a return;
- (2) make a return where none has been made;
- (3) determine or collect the liability of any person for any internal revenue tax; or
- (4) inquire into an offense connected with the administration or enforcement of the tax laws.

There is no requirement that the government establish that it had probable cause to believe the taxpayer misstated tax liability. The IRS may use its summons power to obtain any information which may be relevant to its investigation. *United States v. Powell*, 379 U.S. 48 (1964). The IRS may obtain items of even potential relevance to an ongoing investigation. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984). Nonetheless, a summons can be overbroad or burdensome and the material sought considered irrelevant.

Service of summonses on [REDACTED] and its officers as well as on its shareholder and the trustee and [REDACTED] is appropriate in this case given the taxpayer's failure to cooperate and the obvious link between the taxpayer, its officer, its shareholder and [REDACTED]. It may be that income or deductions reported on the taxpayer's return belong to the trust or to [REDACTED] or another [REDACTED]-controlled entity or that the taxpayer has unreported income. It is irrelevant that the taxpayer's sole shareholder is a trust.

A summons will be enforced only if the IRS has followed the appropriate administrative steps in obtaining the summons. The Internal Revenue Code imposes some additional procedural requirements for summonses directed to third parties. These requirements apply to any summons other than one directed to [REDACTED] or to [REDACTED] as an officer of [REDACTED] (or any other officers that become known during the examination).

Section 7602(c)(1) prohibits third party contacts "without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made." Unless [REDACTED] has already received such notification, it must be provided before serving any third party summonses. Section 7609(a)(1) requires that the Service notify the taxpayer of any summonses served on a third parties within three days of service but no later than 23 days before the day fixed in the summons for examination of records.

Based on the information you have provided concerning the [REDACTED] examination, you should consider serving the following summonses:

1. [REDACTED], through a custodial witness to get records
2. [REDACTED], Vice-President of [REDACTED] to get records and testimony
3. [REDACTED], through a custodial witness to get records.

4. [REDACTED] Trustee of the [REDACTED] to get records and testimony

5. [REDACTED], through a custodial witness to get records of the taxpayer and records of [REDACTED] of [REDACTED] relating to dealings with the taxpayer or its shareholder.

All but the first two summonses are subject to the third party procedural rules discussed above. As the examination proceeds, you may want to summons other corporate officers or advisors or other individuals or entities engaged in transactions with [REDACTED] as their identities become known. We suggest that you contact [REDACTED]'s Legal Department or Tax Department to make arrangements to serve the summonses. The Revenue Agents examining [REDACTED] may be able to supply you with the name of an individual to contact.

We are available to review draft summonses or otherwise assist you in preparing and serving summonses in this case. Please contact Anne Hintermeister, the attorney handling the case in our office, at 212-264-8021, ext. 312.

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